

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

In Re:	)	
	)	
AREDIA and ZOMETA PRODUCTS	)	No. 3:06-MDL-01760
LIABILITY LITIGATION	)	Judge Campbell/Brown
(MDL No. 1760)	)	
	)	
This Document Relates to:	)	
Case No. 3:07-cv-00958	)	
Case No. 3:07-cv-00961	)	
Case No. 3:07-cv-00963	)	
Case No. 3:08-cv-00017	)	
Case No. 3:08-cv-00018	)	
Case No. 3:08-cv-00019	)	
Case No. 3:08-cv-00020	)	

To: The Honorable Todd J. Campbell

**Report and Recommendation**

This matter comes before the Magistrate Judge on Defendant's Motion to Dismiss pursuant to F.R.C.P. 4(M). (DE 1268). Defendant asserts that it has not been served with these Plaintiffs' complaints.

To date, three of the Plaintiffs have requested an extension of time in which to file their respective complaints, claiming an inadvertent error during the service process. (DE 1295). Given the circumstances outlined by these Plaintiffs, it appears there is good cause for the failure to serve within the allotted time. F.R.C.P 4(M). Further, it appears that, in at least one of these cases, Defendant was served with a complete Plaintiff's Fact Sheet. As such, with respect to these three Plaintiffs, the Magistrate Judge recommends that Defendant's Motion to Dismiss be denied so long as Plaintiffs Burke, Yeager and Weeks provide notification of service to the Court by May 23, 2008. If they fail to do so, the Magistrate Judge recommends that their cases be

dismissed.


The remainder of the above Plaintiffs, Weiner, Green, Franklin and Nerzig, have filed notifications of service to the Court. (DE 1282). These Plaintiffs also claim inadvertent error during the service process. Given the circumstances outlined by these Plaintiffs, it appears there is again good cause for the failure to serve within the allotted time. F.R.C.P 4(M). As such, the Magistrate Judge recommends that Defendant's Motion to Dismiss be denied.

While the Magistrate Judge understands that there are hundreds of Plaintiffs to keep track of in this matter, Plaintiffs' counsel must be more careful in the future to follow the applicable rules of civil procedure and to ensure that all complaints are served within the allotted time frame.

For the reasons stated above, the Magistrate Judge recommends that Defendant's Motion to Dismiss be **DENIED** (Docket Entry 1268) as to Plaintiffs Burke, Yeager and Weeks, provided that Plaintiffs file notification of service to the Court by May 23, 2008. If any of these Plaintiffs should fail to provide this notification, the Magistrate Judge recommends that Defendant's Motion to Dismiss be **GRANTED** with respect to that Plaintiff. (Docket Entry 1268). Further, the Magistrate Judge recommends that Defendant's Motion to Dismiss be **DENIED** (Docket Entry 1268) as to Plaintiffs Weiner, Green, Franklin and Nerzig.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objection to it with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985);

*Cowherd v. Million*, 380 F.3d 909, 912 (6<sup>th</sup> Cir. 2004 (en banc)).

  
/s/ Joe B. Brown  
JOE B. BROWN  
UNITED STATES MAGISTRATE JUDGE